UNITED STATES OF AMERICA BEFORE THE NATIONAL LABOR RELATIONS BOARD

EASTERN BUS COMPANY

Employer

and

Case 01-RC-082285

UNITED STEEL, PAPER AND FORESTRY, RUBBER, MANUFACTURING, ENERGY, ALLIED INDUSTRIAL AND SERVICE WORKERS INTERNATIONAL UNION, AFL-CIO, CLC

Petitioner

DECISION AND CERTIFICATION OF REPRESENTATIVE

The National Labor Relations Board, by a three-member panel, has considered objections to an election held June 18, 2012, and the hearing officer's report recommending disposition of them. The election was conducted pursuant to a Stipulated Election Agreement. The tally of ballots shows 41 for and 36 against the Petitioner, with 2 challenged ballots, an insufficient number to affect the results.

The Board has reviewed the record in light of the exceptions and briefs, has adopted the hearing officer's findings and recommendations as modified below,¹ and finds that a certification of representative should be issued.

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¹ The Employer filed four objections, but withdrew Objection 2 at the outset of the hearing. The Employer has excepted to the hearing officer's recommendations to overrule Objections 1 and 4. In the absence of exceptions, we adopt pro forma the hearing officer's recommendation to overrule Objection 3, which alleged that a union organizer's wearing of a prounion placard on the Employer's premises at the preelection conference constituted impermissible electioneering.

Objection 1

We agree with the hearing officer that the Employer failed to prove that the Union engaged in objectionable list keeping when it set up a table outside the entrance to the Employer's Somerville, Massachusetts property on the day of the election and directed some employees to check their names on an employee list as they entered the facility.² The voting was conducted in a school bus, surrounded by "buffer buses," located approximately 70 feet inside the entrance to the Employer's walled-off property. The parties stipulated that the voting place was completely out of sight of the Union's table. As a result, it would have been clear to employees that Union supporters at the table could ascertain only who was going to work that day, and that the Union could not be and was not attempting to keep a list of employees who had voted.

In addition, although the Employer had a total of four locations, two of which served as polling sites, the record indicates that only employees who worked at the Somerville location were to vote there, and there is no indication that any non-Somerville employees voted at Somerville. Thus, this case is factually distinguishable from *Days Inn Management Co.*, 299 NLRB 735 (1990), enf. denied 930 F.2d 211 (2nd Cir. 1991), and *Piggly-Wiggly*, 168 NLRB 792 (1967), both cited by the Employer, in which objectionable list keeping occurred at or just inside the entrances to the employers' premises, away from the polling areas. In those cases, the lists at issue pertained to individuals who were either recently terminated or off-duty employees; accordingly, the only reason for those individuals to be on the premises where the

² In the absence of exceptions, we adopt pro forma the hearing officer's finding that the mere placement of the Union's table with prounion fliers outside of the Employer's property did not constitute impermissible electioneering.

elections took place would have been to vote. As a result, the list keepers in those cases created the impression that they were recording names of people who voted, even though they could not see the actual voting areas.³

Objection 4

We agree with the hearing officer that Union Organizer Steven Kirschbaum's preelection conduct, including repeated visits to the Employer's premises after being directed to stay off the property, did not tend to interfere with employees' free and uncoerced choice in the election. The Employer established that only one employee was aware that Kirschbaum entered the facility in contravention of the Employer's directive to stay away, and there is no evidence that the employee disseminated this information to other employees.

CERTIFICATION OF REPRESENTATIVE

IT IS CERTIFIED that a majority of the valid ballots have been cast for United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union, AFL-CIO, CLC, and that it is the exclusive collectivebargaining representative of the employees in the following appropriate unit:

All full-time bus drivers who regularly work 20 hours per week or more during the school year who report to Somerville, MA (14 Chestnut St.), Wellesley, MA (Massachusetts Bay Community College) and Waltham, MA (18 Farwell St.) yards, but excluding all maintenance employees, monitors, dispatchers, and supervisors, as defined in the Act.

³ We find it unnecessary to rely on the hearing officer's determination that the Union's asserted purpose in maintaining the lists—to ensure that it had accurate contact information for its prospective members—was legitimate. We further find it unnecessary to rely on the hearing officer's finding that, even assuming that the Union was recording employees who voted, the impact of the list keeping was de minimis because the Employer identified only 2 employees who could possibly have believed that their names were being recorded for such purpose.

Dated, Washington, D.C., December 3, 2012.

| | Brian E. Hayes, | Member | |
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| | Richard F. Griffin, Jr., | Member | |
| | Sharon Block, | Member | |
| (SEAL) | NATIONAL LABOR RELAT | NATIONAL LABOR RELATIONS BOARD | |